

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
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BDFTE# 0000000980029

Attorney for INDYMAC FEDERAL BANK, F.S.B ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§ CASE NO. 08-35391-BJH-7
	§
BRENT WINSTON ETHUN, SR	§
and STEFANIE MAE ETHUN,	§
Debtor	§ CHAPTER 7
	§
INDYMAC FEDERAL BANK,	§
F.S.B ITS ASSIGNS AND/OR	§
SUCCESSORS IN INTEREST ,	§
Movant	§ HEARING DATE: 01/20/2009
	§
v.	§ TIME: 01:15 PM
	§
BRENT WINSTON ETHUN, SR	§
and STEFANIE MAE ETHUN;	§
ROBERT YAQUINTO, JR.,	§
Trustee	§
Respondents	§ JUDGE BARBARA J. HOUSER

**MOTION OF INDYMAC FEDERAL BANK, F.S.B ITS ASSIGNS AND/OR
SUCCESSORS IN INTEREST
FOR RELIEF FROM STAY OF ACTION AGAINST DEBTOR(S) PURSUANT TO 11
U.S.C. § 362(a) AND WAIVER OF THIRTY DAY REQUIREMENT PURSUANT TO
§ 362(e)**

NOTICE - RESPONSE REQUIRED

PURSUANT TO LOCAL BANKRUPTCY RULE 4001 (b), A RESPONSE IS REQUIRED. THE TRUSTEE, IF ONE HAS BEEN APPOINTED, OR THE DEBTOR SHALL FILE A RESPONSE TO ANY MOTION FOR RELIEF FROM THE AUTOMATIC STAY WITHIN TWELVE (12) DAYS FROM THE SERVICE OF THE MOTION. THE DEBTOR'S RESPONSE SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE STAY IS TO BE CONTINUED. IF THE DEBTOR DOES NOT FILE A

RESPONSE AS REQUIRED, THE ALLEGATIONS IN THE CREDITOR'S MOTION FOR RELIEF FROM THE AUTOMATIC STAY SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT MAY BE ENTERED BY DEFAULT.

File a written response with the court at:

**CLERK, U.S. BANKRUPTCY COURT
EARLE CABELL U.S. COURTHOUSE, 1100 COMMERCE STREET, Room
1254,
DALLAS, TX 75242-1003**

UNDER BANKRUPTCY RULE 9006 (e) SERVICE BY MAIL IS COMPLETE UPON MAILING; UNDER BANKRUPTCY RULE 9006 (f), THREE (3) DAYS ARE ADDED TO THE PERIOD FOR FILING A RESPONSE WHEN NOTICE OF THE PERIOD IS SERVED BY MAIL.

HEARING PARTICIPANTS ARE NOTIFIED THAT ABSENT COMPELLING CIRCUMSTANCES, EVIDENCE PRESENTED AT PRELIMINARY HEARINGS IN THE DALLAS DIVISION ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY WILL BE BY AFFIDAVIT ONLY. THE PARTY REQUESTING THE HEARING MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 7 DAYS IN ADVANCE OF SUCH HEARING; THE RESPONDING PARTY MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 48 HOURS IN ADVANCE OF SUCH HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Movant, INDYMAC FEDERAL BANK, F.S.B ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST, by and through the undersigned attorney, and moves the Court as follows:

1. This Motion is brought pursuant to 11 U.S.C. §362(d) in accordance with Rule 4001 of the Bankruptcy Rules.
2. On or about October 22, 2008, Debtors (hereinafter "Debtor") filed a petition for an order of relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C.

3. At the time of filing the Chapter 7 petition, Movant held a Note executed on August 2, 2006, in the original amount of THREE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$327,500.00) with interest thereon at the rate of 7.000% per annum. Movant is the Servicer, the holder of the Note, and the mortgagee of record, holding a first security interest in the below described real property and is authorized to bring this action as Movant on behalf of the owner of the loan* pursuant to the Fannie Mae Single-Family Servicing Guide, which is part of the servicing agreement between Servicer and Fannie Mae, and which is published on AllRegs at <https://www.efanniemae.com/sf/guides/ssg/#>.

4. The indebtedness is secured by a Deed of Trust dated August 2, 2006 and executed by BRENT WINSTON ETHUN, SR and STEFANIE MAE ETHUN on real estate with all improvements known as:

A PARCEL OF LAND IN SECTION 4, TOWNSHIP 41 SOUTH RANGE 41 EAST, PALM BEACH COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EASE 125 FEET OF THE SOUTH 200 FEET OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER, AND THE WEST 125 FEET OF THE SOUTH 200 FEET OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 4 (ALSO KNOWN AS PARCEL M-88), LESS THEREFROM, THE EASTERLY 30 FEET CONVEYED TO SOUTH INDIAN RIVER WATER CONTROL DISTRICT IN OFFICIAL RECORD BOOK 5313, PAGE 484.

A true and correct copy of the Deed of Trust is attached hereto as Exhibit "A".

5. Debtor have failed to maintain current the payments due under the Note and are presently in arrears for 8 payments through and including the December 1, 2008 payment.

6. The outstanding indebtedness to Movant is \$327,500.00 principal plus accrued interest, late charges, attorneys fees and costs as provided in the Note and Deed of Trust.

* Federal National Mortgage Association ("Fannie Mae") is the owner of the loan.

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7. Further cause may exist to terminate the automatic stay if the Debtors fail to provide proof of adequate insurance and payment of applicable taxes by Debtors as required by the Note and Deed of Trust. Movant hereby demands proof of insurance and payment of applicable taxes by Debtors. Movant reserves the right to further assert that Debtors have failed to pay taxes or insurance based on the response of Debtors.

8. In accordance with the terms of the Note and Deed of Trust, Movant would allege that it is entitled to reasonable post-petition attorneys fees, including, but not limited to, fees, if any, for the preparation and filing of a proof of claim and fees and costs for the filing of this Motion for Relief from Stay.

9. Debtor have failed to provide adequate protection to Movant which constitutes cause to terminate the automatic stay of 11 U.S.C. §362(a).

10. By reason of the foregoing, Movant requests the Court to terminate the stay so Movant may proceed to foreclose in accordance with its Note and Deed of Trust.

11. Movant reserves the right to assert an 11 U.S.C. § 362(d)(2) Cause of Action, if appropriate, at the hearing on Movant's Motion for Relief.

12. The provision of Rule 4001 (a) (3) should be waived and Movant be permitted to immediately enforce and implement any order granting relief from the automatic stay.

WHEREFORE, Movant prays that this Court enter an order, after notice and hearing, terminating the automatic stay as to Movant; alternatively, Movant be made whole by having all payments brought current. Movant further prays that the Court waive the provision of Rule 4001 (a) (3) and that INDYMAC FEDERAL BANK, F.S.B ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST be permitted to immediately enforce and implement any order granting relief from the automatic stay; that Movant be awarded its reasonable post-petition

attorneys fees and expenses for this Motion; and, that Movant be granted such other and further relief as is just.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

BY: /s/ ABBEY ULSH

12/29/2008

ABBEY ULSH
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ATTORNEY FOR MOVANT

CERTIFICATE OF CONFERENCE

BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, represents the creditor on the foregoing Motion. The undersigned, an attorney, employed by BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP, states that prior to filing the foregoing motion he/she did the following:

Made a good faith effort to negotiate a settlement of the dispute with Debtor's Counsel.

NOTES: Abbey Ulsh spoke to Toby Bartholow who requested 48 hours to contacted the debtor. Debtor's may be surrendering.

Date of Conference Call: October 31, 2008 11:35 a.m.

BY: /s/ ABBEY ULSH 12/29/2008
ABBEY ULSH
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ATTORNEY FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2008, a true and correct copy of the foregoing Motion for Relief from Stay was served via electronic means as listed on the Court's ECF noticing system or by regular first class mail to the parties on the attached list.

Respectfully submitted,

BARRETT DAFFIN FRAPPIER
TURNER & ENGEL, LLP

/s/ ABBEY ULSH

12/29/2008

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DEBTORS:

BRENT WINSTON ETHUN, SR
18959 DALLAS PARKWAY NO. 1611
DALLAS, TX 75287

STEFANIE MAE ETHUN
17267 132ND TRAIL NORTH
JUPITER, FL 33478

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BRENT WINSTON ETHUN, SR
17267 132ND TRAIL NORTH
JUPITER, FL 33478

TRUSTEE:

ROBERT YAQUINTO, JR.
509 N. MONTCLAIR
DALLAS, TX 75208

US TRUSTEE:

1100 COMMERCE STREET, ROOM 976
EARLE CABELL FEDERAL BLDG
DALLAS, TX 75242

DEBTOR'S ATTORNEY:

THEODORE OHMSTEADE BARTHOLOW, JR.
11300 N. CENTRAL EXPWY,
STE. 301
DALLAS, TX 75243

PARTIES IN INTEREST:

SPECIALIZED LOAN SERVICING
8742 LUCENT BLVD
HIGHLANDS BRANCH, CO 80129

PARTIES REQUESTING NOTICE:

None